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4 MICHAEL DEVIN FLOYD,
5 Plaintiff,
6 v.
7 SABER FITNESS HEGENBERGER, LLC,
8 Defendant.

9 Case No. 24-cv-01278-TSH

10 **ORDER RE: JURY TRIAL WAIVER**

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12 Plaintiff Michael Devin Floyd, proceeding *pro se*, filed a complaint for civil rights
13 violations and contract claims against Defendant Saber Fitness Hegenberger, LLC (“Saber”),
14 alleging that Saber improperly terminated Floyd’s gym membership. ECF No. 52 (Third
15 Amended Complaint). The case is set to proceed to a bench trial on January 12, 2026. ECF No.
16 135.

17 In his original Complaint, filed in state court, Floyd stated on the cover, “Demand For Jury
18 Trial.” ECF No. 1-1. In his Second Amended Complaint (“SAC”), Floyd stated on the cover,
19 “Demand For Jury Trial.” ECF No. 40. Under the Federal Rules of Civil Procedure,

20 On any issue triable of right by a jury, a party may demand a jury trial
21 by:

22 (1) serving the other parties with a written demand—which
23 may be included in a pleading—no later than 14 days after the
last pleading directed to the issue is served; and

24 (2) filing the demand in accordance with Rule 5(d).

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26 Fed. R. Civ. P. 38(b). Requesting a jury trial in the caption of a complaint constitutes an
27 unequivocal demand for a jury trial. *Solis v. Cnty. of Los Angeles*, 514 F.3d 946, 954 (9th Cir.
28 2008). Therefore, Floyd properly made a demand for a jury trial.

1 “Once a demand for jury trial has been properly made, however, it ‘may not be withdrawn
2 without the consent of the parties.’” *Id.* (quoting Fed. R. Civ. P. 38(d)). Rule 39 of the Federal
3 Rules of Civil Procedure “sets forth the manner in which this consent may be granted.” *Id.*
4 (cleaned up). Rule 39 states:

5 When a jury trial has been demanded under Rule 38, the action must
6 be designated on the docket as a jury action. The trial on all issues so
demanded must be by jury unless:

7 (1) the parties or their attorneys file a stipulation to a nonjury
8 trial or so stipulate on the record; or
9 (2) the court, on motion or on its own, finds that on some or
all of those issues there is no federal right to a jury trial.

10 Fed. R. Civ. P. 39(a).

11 Here, a joint statement filed by Saber on December 4, 2024, states, “Plaintiff does not
12 request a jury trial.” ECF No. 58 at 7. However, Floyd did request a jury trial in both his original
13 Complaint and SAC. ECF Nos. 1-1, 40. And in his pretrial filings, Floyd refers to the “jury” on
14 numerous occasions. *See* ECF No. 149. Overall, it is not clear that Floyd retracted his request for
15 a jury trial. *See Pradier v. Elespuru*, 641 F.2d 808, 811 (9th Cir. 1981) (“Because the right to
16 a jury trial is a fundamental right guaranteed to our citizenry by the Constitution, courts should
17 indulge every reasonable presumption against waiver.”). In any event, because nothing indicates
18 that the parties both consented to withdraw the request for a jury trial, the Court finds that Floyd’s
19 jury trial demand has not been withdrawn. Fed. R. Civ. P. 38(d).

20 Accordingly, the Court **ORDERS** that if the parties wish to waive a jury trial, they must
21 file a stipulation consenting to a nonjury trial. Any such stipulation shall be filed no later than
22 November 20, 2025. If the parties do not stipulate to withdraw the jury demand, the Court will
23 reschedule the trial as a jury trial.

24 **IT IS SO ORDERED.**

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26 Dated: November 12, 2025

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THOMAS S. HIXSON
United States Magistrate Judge